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HOUSE BILL 3010 By  
Kisber

SENATE BILL 3082  
By McNally

AN ACT to amend Tennessee Code Annotated, Titles 12 and 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

**SECTION 1.** Tennessee Code Annotated, Section 67-4-2004(2)(B), is amended by deleting the words “corporation’s” and “corporation” wherever they appear and substituting instead the words “person’s” or “person”.

**SECTION 2.** Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (5) in its entirety and substituting instead the following:

(5) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

**SECTION 3.** Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following new subsection:

( ) “General partnership” means a partnership in which all partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership. For purposes of this subsection, partners may be “fully liable” even though one or more

persons or individuals dealing with the partnership have by contract agreed to limit their claims against one or more partners or against the partnership as a whole.

**SECTION 4.** Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (9) in its entirety and substituting instead the following:

(9) “Gross Receipts”, “Total Gross Receipts”, “Receipts, and “Total Receipts” shall mean, within the context of the statute in which used, all receipts from whatever sources derived before any deductions, but not including actual sales returns and allowances.

**SECTION 5.** Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (15) in its entirety and substituting instead the following:

(15) “Not-for-profit” means any person described in Sections 401, 408, 408A, 409, 501, 526, 527, 528, 529 or 530 of the Internal Revenue Code, as amended from time to time.

**SECTION 6.** Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (16) in its entirety and substituting instead the following:

(16) “Person” or “taxpayer” means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, or state- or federally-chartered savings and loan association.

**SECTION 7.** Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivisions (20), (21), and (22):

**SECTION 8.** Tennessee Code Annotated, Section 67-4-2006(a)(1), is amended by inserting the words and punctuation “(including any limited liability company treated as a corporation for federal income tax purposes)” after the word “purposes”.

**SECTION 9.** Tennessee Code Annotated, Section 67-4-2006(a)(3), is amended by deleting the words and letters “(b), (c) and (d)” and substituting instead the words and letters “(b) and (c) of this section”.

**SECTION 10.** Tennessee Code Annotated, Section 67-4-2006, subdivision (a)(4)(A), is amended by deleting the words and punctuation after “Internal Revenue Code” and substituting instead the following: “including, but not limited to, guaranteed payments to partners and capital gains, which additional items are not already included in ordinary income or loss; less”.

**SECTION 11.** Tennessee Code Annotated, Section 67-4-2006, subdivision (a)(4)(B), between the words “taxes” and “distributable”, is amended by adding the words and punctuation “, without regard to any cap,”.

**SECTION 12.** Tennessee Code Annotated, Section 67-4-2006(a)(6), is amended by deleting the words and punctuation “estate, other than a decedent’s estate” in subdivision (6).

**SECTION 13.** Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following new subdivision immediately after subdivision (4) and by renumbering the remaining subdivisions accordingly:

( ) Any law to the contrary notwithstanding, a single member limited liability company whose single member is a general partnership and which is disregarded for federal income tax purposes shall be subject to the taxes imposed by this Part and Part 21 of this Chapter. The single member limited liability company’s “net earnings” or “net loss” for excise tax purposes shall be determined in the same manner as set forth in subdivision (4) above.

**SECTION 14.** Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting subdivision (F) in its entirety and substituting instead the following:

(F) Any gross premiums tax deducted in determining net earnings but taken as a credit against the excise tax under the provisions of Section 67-4-2009(1).

**SECTION 15.** Tennessee Code Annotated, Section 67-4-2007(a), is amended by deleting the last sentence thereof and by substituting the following new sentences:

Notwithstanding the fact that a person is not-for-profit, such person shall be subject to excise tax on all of its Tennessee net earnings to the extent such earnings constitute unrelated business taxable income as defined in Section 512 of the Internal Revenue Code or are otherwise subject to income taxes under Subtitle A of such Code.

Notwithstanding the fact that a person is otherwise exempted from the excise tax, such person shall be subject to excise tax on all of its Tennessee net earnings that are attributable to any activities unrelated to and outside the scope of the activities that give it an exemption status.

**SECTION 16.** Tennessee Code Annotated, Section 67-4-2007(b), is amended by adding the following language:

A person doing business in Tennessee without incorporating, domesticating, qualifying or otherwise registering in Tennessee, or doing business in Tennessee while its charter, domestication, qualification or other registration is forfeited, revoked or suspended, shall not be relieved from filing a return and paying the excise tax levied by this part for each tax year that it does business in Tennessee.

**SECTION 17.** Tennessee Code Annotated, Section 67-4-2007, is amended by adding the following new subsections:

( ) For purposes of the excise tax levied by this part, a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes, and subject to tax in accordance with this Part 20. Notwithstanding any provision of law to the contrary, entities that are disregarded for federal income tax purposes, except for limited liability companies whose single member is a corporation, shall not be disregarded for Tennessee excise tax purposes.

( ) Except for unitary groups of financial institutions and business entities that have been required or permitted to file excise tax returns on a combined, consolidated or separate accounting basis under Section 67-4-2014, each taxpayer shall be considered a separate and single business entity for Tennessee excise tax purposes and shall file its Tennessee excise tax return on a separate entity basis reflecting only its own business activities even though it may have filed a consolidated federal income tax return with other members of its unitary group. The federal taxable income computed on a separate entity basis excise tax return and subject to adjustments set forth in Section 67-4-2006 shall be the same federal taxable income that would have been computed on the taxpayer's federal return if it had been filed on a separate entity basis rather than a consolidated basis.

**SECTION 18.** Tennessee Code Annotated, Section 67-4-2008, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) There shall be exempt from the payment of the excise tax levied under this part the following:

(1) Any corporation organized under the laws of the state of Tennessee whose sole expressed corporate purpose is for the furthering of industrial development in communities throughout the state, and doing matters related thereto, and whose stockholders receive no income other than interest or dividends on money invested in such corporation for constructing industrial buildings and whose officers receive no compensation;

(2) Corporations organized for the purpose of erecting, owning or operating a common meeting place for more than one (1) Masonic Lodge, more than one (1) Lodge of Odd Fellows, or similar lodges, and which corporations could obtain general welfare charters, and in which corporations all the stock is owned by lodges participating in the common temple or meeting place,

regardless of the type of charter held by such operating corporations, except on income received by such corporations as rentals for use for commercial purposes;

(3) Any regulated investment company or investment fund organized as a unit investment trust taxable as a grantor trust under 26 U.S.C. §§ 671-677; provided, that not less than seventy-five percent (75%) of the value of the investments of such regulated investment company or unit investment trust shall be in any combination of bonds of the United States, state of Tennessee, or any county or any municipality or political subdivision of the state, including any agency, board, authority or commission of the state or its subdivisions;

(4) Federal credit unions, credit unions organized under the laws of other taxing jurisdictions, production credit associations organized under 12 U.S.C. § 2071 et seq., or merged associations under 12 U.S.C. § 2279c-1, production credit associations organized under title 56, chapter 4, part 4, or investment companies organized under title 56, chapter 4, part 3;

(5) Venture capital funds; provided, that for purposes of this part, a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding and/or selling securities, including debt securities, primarily in non-publicly traded companies on its own behalf and not as a broker, and the capital of which fund is primarily derived from investments by entities and/or individuals which are neither related to nor affiliated with the fund. For purposes of this subdivision, the following provisions shall apply:

(A) I.R.C. Section 267(b) and (f) and any federal regulations applicable thereto, as they may be amended from time to time, shall be used to determine whether entities and/or individuals are “related.”

(B) “Affiliated” means entities that are part of an affiliated group as defined in I.R.C. Section 1504(a) and any applicable federal regulations thereto, as they may be amended from time to time.

(C) “Primarily,” as used in this subdivision, means over fifty percent (50%).

(D) “Non-publicly traded companies” means any business entity that is not a “publicly traded company”, as defined by subdivision (E) below.

(E) A “publicly traded company” is any company that is traded on:

(i) a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or exempted from registration under such Act by 15 U.S.C. 78f because of the limited volume of transactions;

(ii) a foreign securities exchange operating under principles analogous to a national securities exchange;

(iii) a regional or local exchange;

(iv) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise; or

(v) on a secondary market or the substantial equivalent thereof, if taking into account all of the facts and circumstances, the owners are readily able to buy, sell or exchange their ownership interest in a manner that is comparable, economically, to trading on an exchange.

(6) Limited liability companies, limited partnerships, and limited liability partnerships if all of the following criteria are met:

(A) At least 66.67% of the activity of the entity is either farming or the holding of one or more personal residences where one or more of the members or partners reside. For purposes of this subdivision, the following provisions shall apply:

(i) "Farming" is the growing of crops, nursery products, timber or fibers, such as cotton, for human or animal use or consumption or the keeping of horses, cattle, sheep, goats, chickens or other animals for human or animal use or consumption or the keeping of animals that produce products, such as milk, eggs, wool or hides for human or animal use or consumption.

(ii) For this purpose, the activity of the entity shall be considered farming only if at least 66.67% of its income, including capital gains from the sale of assets used in farming, is derived from farming and at least 66.67% of its assets, valued at original cost to the entity, are used by the owner or by the owner's lessee or sharecropper for farming. In the event that an asset's original cost to the entity cannot be determined, or there is no original cost to the entity, for purposes of this subdivision, the property shall be valued at its fair market value at the time of acquisition by the entity.

(iii) A "personal residence(s)", as the term is used in subdivision (A) above, shall include acreage contiguous to the dwelling.

(iv) Any entity that qualifies for franchise tax exemption under this subdivision (6), because of farming activity or because

property has been used as a personal residence for at least five years, shall remain exempt for one year from the end of the calendar year in which it ceases to qualify for the exemption, but only with regard to property and transactions related to property that it held at the time that it last qualified for the exemption. Net worth resulting from sales and other transactions involving real, tangible, or intangible property acquired by the entity after it ceased to qualify for the exemption ("after-acquired property") shall be subject to the franchise tax. After-acquired property shall be included in the entity's franchise tax minimum measure. If the entity computes an apportionment formula, any after-acquired property and any compensation or gross receipts related to such property shall be included in the appropriate factors of such formula.

(v) In order to qualify as a personal residence, the dwelling unit must be occupied for personal use by partners or members of the entity for more days than it is rented to others who are not partners or members of the entity. For purposes of this subdivision, the provisions of I.R.C. Section 280A(d)(2) shall be used to define "personal use".

(B) At least ninety-five percent (95%) of the voting rights, capital interest or profits of the entity are owned either by natural persons who are relatives of one another or by trusts for their benefit. For this purpose, natural persons shall be considered "relatives" if, by blood or adoption, they are descended from a common ancestor and their relationship with

each other is that of a first (1st) cousin or closer than that of a first (1st) cousin, or if they are spouses of one another.

(7) Limited liability companies, limited liability partnerships or limited partnerships existing on May 1, 1999, on which date and at all times thereafter met all of the following criteria:

(A) were at least ninety-eight percent (98%) owned by corporate members of an affiliated group as defined in 26 U.S.C. Section 1504(a);

(B) were formed and operated for the exclusive purpose of acquiring notes from members of such affiliated group, accounts receivable, installment sale contracts, and similar evidence of indebtedness obtained in the ordinary course of business by one or more members of such affiliated group;

(C) the assets of which directly or indirectly serve as security for third party borrowings or securitized indebtedness acquired by third parties;

(D) at least eighty percent (80%) of the income therefrom included in the income of a corporation doing business in Tennessee; and

(E) such income is subject to the applicable allocation and apportionment rules as found in this part.

(8) Limited liability companies, limited partnerships and limited liability partnerships, all of whose members or partners are fully liable for the debts, obligations and liabilities of the entity, as provided in subsections (b), (c) and (d), and who have filed appropriate documentation to that effect with the secretary of state on or before the first day of the taxable year; provided, however, for tax years beginning before January 2, 2000, such documentation shall be filed on or before September 15, 2000; and further provided that this item (8) shall not apply

to any limited liability company, limited partnership or limited liability partnership which is owned, in whole or in part, directly or indirectly, by a corporation other than a not-for-profit corporation. If an additional partner or member is admitted to the entity, such partner or member must file the appropriate documentation with the secretary of state within sixty days of such person's admission. For purposes of this item, partners or members may be "fully liable" even though one or more persons or individuals dealing with the partnership or limited liability company have by contract agreed to limit their claims against one or more partners or members or against the partnership or limited liability company.

(9) An entity which satisfies both of the following requirements:

(A) It is classified as a partnership or trust in accordance with the provisions of 26 USC Section 7701 and the federal regulations and rulings promulgated thereunder or has elected to be treated as a real estate mortgage investment conduit (REMIC) under 26 USC Section 860D or as a financial asset securitization investment trust (FASIT) under 26 USC Section 860L; and

(B) The sole purpose of the entity, except for foreclosures and dispositions of the assets of foreclosures, is the asset-backed securitization of debt obligations, such as first or second mortgages, including home equity loans, trade receivables (whether an open account or evidenced by a note or installment or conditional sales contract), obligations substituted for trade receivables, credit card receivables, personal property leases treated as debt for purposes of the Internal Revenue Code of 1986, as amended, automobile loans or similar debt obligations. The term "trade receivables" as used in the above sentence

is defined as obligations arising from the sale of inventory in the ordinary course of business.

(b)(1) Notwithstanding any provision of law to the contrary, the certificate of a limited partnership may provide that one (1) or more specifically identified limited partners, as named in the certificate of limited partnership, will be personally liable for all of the debts, obligations and liabilities of the limited partnership to the same extent as a general partner, and if so, each such specifically identified limited partner shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each limited partner so identified must sign the certificate of limited partnership, or an amendment to the certificate of limited partnership containing this provision and such signature must be notarized. The certificate or amendment must contain the following two sentences in all capitalized letters: "THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE SUCH LIMITED PARTNER TO BE PERSONALLY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THE LIMITED PARTNERSHIP TO THE SAME EXTENT AS A GENERAL PARTNER. PLEASE CONSULT YOUR ATTORNEY."

The amendment or certificate may provide that it is only effective if all limited partners make and maintain such an election. In such case the certificate of limited partnership must affirmatively identify each general and limited partner of the limited partnership and state that such persons constitute all partners.

(B) Each such limited partner shall continue to be personally liable for all of the debts, obligations and liabilities of the partnership to the same extent as a general partner would be until (i) such limited partner withdraws from the partnership and the withdrawal is recorded with the certificate of limited partnership at the Secretary of State's Office or (ii) the certificate of limited partnership is amended to strike such limited partner's name as a limited partner

electing joint and several liability or, if the certificate of limited partnership provides that all limited partners must elect joint and several personal liability for all of the debts, obligations and liabilities of the limited partnership if any limited partners are to be so liable, an amendment striking one limited partner who continues to be a limited partner shall strike all limited partners. Such document must be executed by the limited partner desiring to cease being so liable and promptly delivered to the general partner(s) and all other partners who are identified in the certificate of limited partnership as being jointly and severally personally liable for the debts, obligations and liabilities of the limited partnership.

(C) Such limited partnership must have a written partnership agreement that sets forth in reasonable detail (i) the purpose of the limited partnership, (ii) the identity of each general partner; (iii) the scope of authority within the limited partnership of one or more of the general partners to incur debt or other obligations in the absence of limited partner approval; (iv) the fact that each limited partner electing to have joint and several liability will be liable for the all debts and obligations of the limited partnership however arising (contract, tort, or otherwise) or from the actions of the general partner(s) or other limited partners in furtherance of the limited partnership's business or other activity; (v) the fact that each limited partner may revoke his or her election to have joint and several unlimited liability and remain a limited partner; and (vi) the terms and conditions under which one or more general partners may be removed or the limited partnership dissolved and terminated.

(2) A limited partner who is identified in the certificate of limited partnership as being personally liable, always has the power but not necessarily the right, to revoke the election for joint and several liability for the limited partnership's debts and obligations by filing an amendment to the certificate of limited partnership stating that such limited

partner revokes his or her election to be personally liable and will not be liable for any future debts, obligations and liabilities of the limited partnership and will not be liable for any future debts, obligations and liabilities of the partnership. Such amendment to the certificate shall be effective immediately except as provided in item (3) below.

(3) An amendment to the certificate of limited partnership filed pursuant to subdivision (2) is not effective against such parties reasonably relying upon such certificate until the passage of ninety (90) days from the filing of the amendment to the certificate of limited partnership. Notwithstanding the preceding, such limited partner or former limited partner will continue to be liable for all of the debts, obligations and liabilities of the limited partnership incurred by the limited partnership while such limited partner assumed such liability, including, if applicable, the above described 90 day period.

(c)(1) Notwithstanding any provision of law to the contrary, the application of registered limited liability partnership may provide that one (1) or more specifically identified partners, as named in the application, will be personally liable for all of the debts, obligations and liabilities of the registered limited liability partnership to the same extent as a general partner of a general partnership; provided, that:

(A) In order to be effective, each partner so identified must sign the application of registered limited liability partnership, or an amendment to the application of registered limited liability partnership containing this provision and such signature must be notarized. The application or amendment must contain the following two sentences in all capitalized letters: "THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE SUCH PARTNER TO BE PERSONALLY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THE LIMITED LIABILITY PARTNERSHIP TO THE SAME EXTENT AS A GENERAL PARTNER OF A GENERAL PARTNERSHIP. PLEASE CONSULT YOUR

ATTORNEY.” The amendment or application may provide that it is only effective if all partners make and maintain such an election. In such case the application of registered limited liability partnership must affirmatively identify each partner of the limited liability partnership and state that such persons constitute all partners;

(B) Each such partner shall continue to be personally liable for all of the debts, obligations and liabilities of the partnership to the same extent as a general partner of a general partnership until (i) such partner withdraws from the partnership and the withdrawal is recorded with the application at the Secretary of State’s Office or (ii) the application of registered limited liability partnership is amended to strike such partner’s name as a partner electing joint and several liability or, if the application of limited liability partnership provides that all partners must elect joint and several personal liability for all of the debts, obligations and liabilities of the partnership if any are to be so liable, an amendment striking one partner who has not withdrawn and continues to be a partner shall strike all partners. Such document must be executed by the partner desiring to cease being so liable and promptly delivered to all remaining partners who are identified in the application of registered limited liability partnership as being jointly and severally personally liable for the debts, obligations and liabilities of the partnership to the same extent as a general partner of a general partnership.

(2) Such limited liability partnership must have a written partnership agreement that sets forth in reasonable detail (i) the purpose of the partnership, (ii) the identity of each partner; (iii) the scope of authority within the partnership of one or more of the partners to incur debt or other obligations in the absence of partner approval; (iv) the fact that each partner electing to have joint and several liability will be liable for the all debts and obligations of the partnership however arising (contract, tort, or otherwise) or from

the actions of the other partners in connection with the partnership's business or other activity; (v) the fact that each partner has the power to revoke his or her election to have joint and several unlimited liability and remain a partner; and (vi) the terms and conditions under which one or more partners may be removed or the partnership dissolved and terminated.

(3) A partner who is identified in the application of a limited liability partnership as being personally liable, always has the power but not necessarily the right, to revoke the election for joint and several liability for the partnership's debts and obligations by filing an amendment to the application of limited liability partnership stating that such partner has revoked his or her election to be liable for the debts and obligations of the partnership and will not be liable for any future debts, obligations and liabilities of the partnership. Such amendment to the application shall be effective immediately except as provided in item (4) below.

(4) An amendment to the application of a limited liability partnership filed pursuant to §61-1-143 is not effective against such parties reasonably relying upon such application until the passage of ninety (90) days from the filing of the amendment to the application of limited liability partnership. Notwithstanding the preceding, such partner or former partner will continue to be liable for all of the debts, obligations and liabilities of the partnership incurred by the partnership while such partner assumed such liability.

(d)(1) Notwithstanding any provision of law to the contrary, the articles of a limited liability company may provide that one (1) or more specifically identified members, as named in the articles, will be personally liable for all of the debts, obligations and liabilities of the limited liability company and, if so, each such specifically identified member shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each member so identified must sign the articles, or an amendment to the articles containing this provision. The amendment or articles may provide that it is only effective if all members make and maintain such an election. In such case the articles must affirmatively identify each member and state that such persons constitute all of the members of the limited liability company;

(B) Each such member shall continue to be personally liable for all of the debts, obligations and liabilities of the limited liability company to the same extent as a general partner of a general partnership until (i) the member withdraws from the limited liability company or (ii) the articles are amended to strike such member's name as a member electing joint and several liability or, if the articles provide that all members must elect joint and several personal liability for all of the debts, obligations and liabilities of the limited liability company if any are to be so liable, an amendment striking one member who continues to be a member shall strike all members. Such document must be executed by the member desiring to cease being so liable and promptly delivered to any remaining members who are identified in the articles as personally being jointly and severally liable for the debts, obligations and liabilities of the limited liability company.

**SECTION 19.** Tennessee Code Annotated, Section 67-4-2009(4)(A), is amended by deleting subdivision (ii) and substituting instead the following:

(ii) "Computer", "computer network", "computer software", or "computer system" as defined by Section 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the "required capital investment" in Tennessee described in Section 67-4-2109(c)(1)(C), if as a result of

making such purchase and meeting the other requirements set forth in Section 67-4-2109(c), the taxpayer qualifies for the job tax credit provided therein.

**SECTION 20.** Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the last sentence of subsection (b) in its entirety and substituting instead the following:

For this purpose, “property” shall include a taxpayer’s ownership share of the real or tangible property owned or rented by any general partnership, or entity treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. A return being filed by a limited liability company that has a general partnership as its single member shall include in its property factor only the real and tangible property owned or used by the limited liability company. “Property” shall also include a taxpayer’s ownership share of the real or tangible property owned or rented by any limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee excise tax. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c) below.

**SECTION 21.** Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the last sentence of subsection (e) in its entirety and substituting instead the following:

For this purpose, “compensation” shall include a taxpayer’s ownership share of the compensation of any general partnership, or entity treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. A return being filed by a limited liability company that has a general partnership as its single member shall include in its payroll factor only the compensation attributed to the limited liability company. “Compensation” shall also include a taxpayer’s share of any specific compensation of any limited partnership, subchapter S corporation, limited liability

company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee excise tax.

**SECTION 22.** Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the last sentence of subsection (g) in its entirety and substituting instead the following:

For this purpose, "gross receipts" shall include a taxpayer's ownership share of the gross receipts of any general partnership, or entity treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. A return being filed by a limited liability company that has a general partnership as its single member shall include in its receipts factor only the gross receipts attributed to the limited liability company. "Gross receipts" shall also include a taxpayer's ownership share of gross receipts of any limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee excise tax.

**SECTION 23.** Tennessee Code Annotated, Section 67-4-2015(b)(1) is amended by deleting the first sentence thereof and substituting the following: "Every taxpayer, who has a combined franchise and excise tax liability of five thousand dollars (\$5000) or more for the current tax year, shall make four (4) equal quarterly estimated franchise and excise tax payments for its current tax year.

**SECTION 24.** Tennessee Code Annotated, Section 67-4-2015(d), is amended by adding the following new sentence:

Notwithstanding any provision of law to the contrary, a taxpayer that has timely made four (4) quarterly estimated franchise and excise tax payments, each of which equals at

least twenty-five percent (25%) of the current year's franchise and excise tax liability, shall not be assessed a deficiency penalty with regard to any quarterly payment.

**SECTION 25.** Tennessee Code Annotated, Section 67-4-2015(g), is amended by deleting in their entirety the words, numbers and punctuation "one hundred percent (100%)" wherever they appear and substituting instead the words, numbers and punctuation "ninety percent (90%)".

**SECTION 26.** Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following new section:

(a) The provisions of this section shall apply to any person who meets all of the following criteria, notwithstanding any other provision of law to the contrary:

(1) The person was formed as a business entity after December 31, 1995.

(2) The person was not subject to Tennessee franchise, excise taxes prior to the date Chapter 406 of the Public Acts of 1999 became applicable to it.

(3) Had the person been subject to franchise taxes, it could have, under the provisions of § 67-4-908(c) prior to its repeal by Chapter 406, qualified for the job tax credit and any carryover thereof for the calendar tax years 1997 and 1998.

(b) Any person who meets the criteria set forth in subsection (a)(1) through (5) above shall be entitled to:

(1) In accordance with the provisions and limitations of § 67-4-908(c) prior to its repeal, compute any job tax credit that it would have been entitled to for the calendar tax years 1997 and 1998, had it been subject to the Tennessee franchise tax for those tax years.

(2) Apply the job tax credit computed under subdivision (1) of this subsection to the franchise tax that it would have had in that tax year, had it been

subject to such tax, and apply any remaining unused carryover thereof to the franchise tax that it had, or would have had if it had been subject to the franchise tax, in the next succeeding tax year until fully utilized, but in no case for more than fifteen years after the tax year in which the credit originated.

(3) In accordance with the provisions and limitations of § 67-4-808(5) prior to its repeal, compute any industrial machinery excise tax credit that it would have had for the calendar tax years 1997 and 1998, had it been subject to the Tennessee excise tax for those tax years.

(4) Apply the industrial machinery excise tax credit computed under subdivision (3) of this subsection to the excise tax that it would have had if it had been subject to the excise tax in that tax year, and apply any remaining unused carryover thereof to the excise tax that it had, or that it would have had if it had been subject to such tax, in the next succeeding tax year until fully utilized, but in no case for more than fifteen years after the tax year in which the credit originated. The recapture provisions of § 67-4-808(5)(4)(D) before its repeal shall apply if any of the industrial machinery purchased in 1997 or 1998 is sold or removed from the state of Tennessee before the expiration of its useful life as established according to the depreciation guidelines in effect for excise tax purposes.

(5) In accordance with the provisions and limitations of § 67-4-805(b)(2)(C) prior to its repeal, compute any net operating loss carryover that it would have had for the calendar tax years 1997 and 1998 had it been subject to Tennessee excise tax for those tax years.

(6) Apply any net operating loss carryover computed under subdivision (5) of this subsection to any Tennessee net earnings subject to Tennessee excise tax, or that would have been subject to excise tax had the person been

liable to pay such a tax, in the next succeeding tax year until fully utilized, but in no case for more than fifteen years after the tax year in which the loss originated.

**SECTION 27.** Tennessee Code Annotated, Section 67-4-2105, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) All persons doing business in Tennessee, including any limited liability company regardless of how it is treated for federal income tax purposes, or any person exercising the corporate franchise, except for those having not-for-profit status or otherwise exempt under section 67-4-2008, shall pay to the commissioner of revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax shall be paid for the privilege of doing business in Tennessee, and shall be in addition to all other taxes levied by any other statute. Notwithstanding any provision of law to the contrary, a not-for-profit entity shall be subject to the franchise tax on all of its Tennessee net worth or real or tangible personal property owned or used, as the case may be, that is attributable to activities subject to income taxes under Section 512 or any other provision of Subtitle A of the Internal Revenue Code. Notwithstanding any provision of law to the contrary, a taxpayer that is exempted from the franchise tax shall be be subject to such tax on all of its Tennessee net worth or real or tangible personal property owned or used, as the case may be, that is attributable to any activities that are unrelated to and outside the scope of the activities that gave the entity its exempt status.

**SECTION 28.** Tennessee Code Annotated, Section 67-4-2105(c), is amended by adding the following language:

A person doing business in Tennessee without incorporating, domesticating, qualifying or otherwise registering in Tennessee or doing business in Tennessee while its charter, domestication, qualification or other registration is forfeited, revoked or suspended shall

not be relieved from filing a return and paying the franchise tax levied by this part for each tax year that it does business in Tennessee.

**SECTION 29.** Tennessee Code Annotated, Section 67-4-2106(a) is amended by deleting the words “in accordance with generally accepted accounting principles” and substituting instead the words “determined in accordance with subsection (b) below”.

**SECTION 30.** Tennessee Code Annotated, Section 67-4-2106, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) For purposes of this section, for taxpayer’s filing on a separate entity basis, “net worth” is defined as the difference between a taxpayer’s total assets less its total liabilities computed in accordance with generally accepted accounting principles. However, if the taxpayer does not maintain its books and records in accordance with generally accepted accounting principles, net worth shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the taxpayer’s net worth for purposes of the tax levied by this part. For taxpayers required by this part to file as a unitary group on a combined basis, “net worth” is defined as the difference between each such taxpayers’ total assets less its total liabilities computed in accordance with generally accepted accounting principles.

**SECTION 31.** Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following new subsections:

( ) For purposes of the franchise tax levied by this part, a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes, and subject to tax in accordance with this Part 21. Notwithstanding any provision of law to the contrary, entities that are disregarded for federal income tax purposes, except for limited liability companies whose single member is a corporation, shall not be disregarded for Tennessee franchise tax purposes. Except for unitary groups of financial institutions,

business entities that have been required or permitted to file franchise tax returns on a combined, consolidated or separate accounting basis under Section 67-4-2112, each taxpayer shall be considered a separate and single business entity for Tennessee franchise tax purposes and shall file its Tennessee franchise tax return on a separate entity basis reflecting only its own business activities even though it may have filed a consolidated federal income tax return with other members of its unitary group.

**SECTION 32.** Tennessee Code Annotated, Section 67-4-2107(b), is amended by adding the following sentence:

Provided, however, if the taxpayer, other than any taxpayer required by this part to file as a unitary group on a combined basis, does not maintain its books and records in accordance with generally accepted accounting principles, the value of the interest shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the value of the taxpayer's ownership interest for purposes of the tax levied by this part.

**SECTION 33.** Tennessee Code Annotated, Section 67-4-2108(a), is amended by deleting subdivision (3) in its entirety and substituting in its place the following:

(3) For purposes of this section, "property" shall be valued at cost less accumulated depreciation in accordance with generally accepted accounting principles; provided, however, if the taxpayer, other than any taxpayer required by this part to file as a unitary group on a combined basis, does not maintain its books and records in accordance with generally accepted accounting principles, the value of the property shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the property's value for purposes of the tax levied by this part. A return being filed by a limited liability company that has a general partnership as its single member shall include in its franchise tax minimum measure only the real and tangible property owned or used by the limited liability

company. For this purpose, “property” includes a taxpayer’s ownership share of the real or tangible property owned or rented by any general or limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal tax purposes and not subject to the tax levied by this part and in which the taxpayer has an ownership interest either directly or indirectly through one or more such entities. In cases where part or all of the property is rented, the value of rented property used shall be determined by multiplying the net annual rental by the following multiples:

	Multiples
(a) Real property .....	8
(b) Machinery and equipment used in manufacturing and processing ...	3
(c) Furniture, office machinery and equipment .....	2
(d) Delivery or mobile equipment .....	1

**SECTION 34.** Tennessee Code Annotated, Section 67-4-2109(c)(1)(B) is amended by deleting “corporate offices” and substituting “offices of persons subject to the franchise or excise tax.

**SECTION 35.** Tennessee Code Annotated, Section 67-4-2111(b), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) For purposes of this section, “property” shall include a taxpayer’s ownership share of the real or tangible property owned or rented by any general partnership, or entity treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. A return being filed by a limited liability company that has a general partnership as its single member shall include in its property factor only the real and tangible property owned or used by the limited liability company.

“Property” shall also include a taxpayer’s ownership share of the real or tangible property owned or rented by any limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in

which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee franchise tax. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c) below.

**SECTION 36.** Tennessee Code Annotated, Section 67-4-2111(e), is amended by deleting subdivision (3) in its entirety and substituting instead the following:

(3) For purposes of this section, “compensation” shall include a taxpayer’s ownership share of the compensation of any general partnership, or entity treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. A return being filed by a limited liability company that has a general partnership as its single member shall include in its payroll factor only the compensation attributed to the limited liability company. “Compensation” shall also include a taxpayer’s ownership share of the real or tangible property owned or rented by any limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee franchise tax.

**SECTION 37.** Tennessee Code Annotated, Section 67-4-2111(g), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) For purposes of this section, “gross receipts” shall include a taxpayer’s ownership share of the gross receipts of any general partnership, or entity treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. A return being filed by a limited liability company that has a general partnership as its single member shall include in its receipts factor only the gross

receipts attributed to the limited liability company. "Gross receipts" shall also include a taxpayer's ownership share of gross receipts of any limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee franchise tax.

**SECTION 38.** Tennessee Code Annotated, Section 67-4-2119, is amended by adding at the end of the section the following new language:

A taxable entity that is incorporated, domesticated, qualified or otherwise registered to do business in Tennessee but is, or has become, inactive in Tennessee, or whose charter, domestication, qualification or other registration is forfeited, revoked or suspended without the entity being properly dissolved, surrendered, withdrawn, canceled or otherwise properly terminated, shall not be relieved from filing a return and paying the franchise tax (which shall be no less than the one hundred dollar (\$100) minimum) levied by this part for each tax year.

**SECTION 39.** Tennessee Code Annotated, Section 67-1-1701, is amended by adding the following new subdivision:

( ) "Tax administration information" means criteria or standards used or to be used for the selection of returns or persons for audit or examination, or data used or to be used for determining such criteria or standards; audit procedures; and any other information relating to tax administration.

**SECTION 40.** Tennessee Code Annotated, Section 67-1-1702, is deleted in its entirety and the following is substituted instead:

67-1-1702. Notwithstanding any provision of law to the contrary, returns, tax information and tax administration information shall be confidential and, except as authorized by this part, no officer or employee of the state and no other person (or officer

or employee thereof) who has or had access to such information shall disclose any such information obtained by such officer or employee in any manner in connection with such officer's or employee's service as such officer or employee, or obtained pursuant to the provisions of this part, or obtained otherwise.

**SECTION 41.** Tennessee Code Annotated, Section 67-1-1709, is amended by adding the following new subsection:

(c) It is a Class E felony for any employee of the department willfully to inspect any return or tax information except when the employee has a good faith and objectively reasonable basis for believing such inspection is in furtherance of the employee's duties or responsibilities.

**SECTION 42.** Tennessee Code Annotated, Title 67, Chapter 1, Part 17, is amended by adding the following new section:

The commissioner is authorized to disclose tax administration information, other than returns and tax information, if the commissioner determines that such disclosure is in the best interests of the state; provided, however, that no provision of law shall be construed to require disclosure of criteria or standards used or to be used for the selection of returns or persons for audit or examination, or data used or to be used for determining such criteria or standards, if the commissioner determines that such disclosure will impair assessment, collection, or enforcement under state tax laws.

**SECTION 43.** Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following new section:

(a) The state or other state entities shall not contract to acquire goods or services, and no person may contract to supply goods or services to the state or other state entities, unless, prior to or contemporaneous with entering into the contract, the person contracting to supply goods or services and its affiliates register with the department of revenue to collect and remit the sales and use tax levied by Title 67,

Chapter 6; provided, however, nothing in this section shall require a person or affiliate to register if the person or affiliate does not make sales to customers in Tennessee of tangible personal property or services, which if the sales occurred wholly within Tennessee would be taxable under this chapter. This provision is specifically applicable to foreign persons, notwithstanding the fact that such foreign persons or their affiliates may not otherwise be legally obligated to collect and remit such tax.

(b) For purposes of this section:

(1) "Person(s)" has the same meaning as in § 67-6-102(21).

(2) "Other state entities" has the same meaning as in § 12-4-601.

(3) "Affiliates" means each and every affiliate of the person contracting with the state or other state entities, as the term "affiliate" is defined in § 48-103-102(1).

(c) The commissioner of revenue and the commissioner of finance and administration shall devise procedures to ensure compliance with the provisions of this section.

Tennessee Code Annotated § 67-1-1707 is amended by adding the following new subsection:

( ) The commissioner may provide tax information to an official of any state agency or other state entity, for the purpose of insuring compliance with the provisions of Title 12, Chapter 4, Part 1, requiring that persons contracting with the state or other state entities register themselves and their affiliates to collect and remit taxes. No agency or employee thereof who receives tax information under this subsection shall disclose such information to any person other than the person to whom it relates, except as otherwise may be authorized by law.

**SECTION 44.** Tennessee Code Annotated, Section 67-1-1440(g) is amended by adding at the end of the first sentence the following words and punctuation: “; provided, however, if use

tax of less than five hundred dollars (\$500) is involved, the offense shall be a Class A misdemeanor.”

**SECTION 45.** (a) Sections 1 through 38 of this Act shall take effect upon becoming law, and shall apply to tax years beginning on or after July 1, 1999, and to limited liability companies, limited liability partnerships and limited partnerships whose tax years ended on or after June 30, 1999, and in which one or more corporations subject to franchise and excise taxes under Tennessee Code Annotated Sections 67-4-801 et seq. and 67-4-901 et seq. before their repeal by Chapter 406 of the Public Acts of 1999, directly or indirectly had in the aggregate an eighty percent (80%) or more ownership interest at any time after June 30, 1998, the public welfare requiring it.

(b) Section 43 of this Act shall take effect on January 1, 2001, the public welfare requiring it.

(c) All other sections of this Act shall take effect upon becoming law, the public welfare requiring it.